

ment, or on an impossible day, or on a day that never happened, or by reason of any mere defect or imperfection in matters of form which shall not tend to the prejudice of the defendant, nor for any matter or cause which might have been a subject of demurrer to the indictment, inquisition or presentment.

Demurrer.

Since adoption of this section, the usual and only proper mode of testing constitutionality of a statute under which a party is indicted is by demurrer to indictment. *Foot v. State*, 59 Md. 266.

This section referred to in overruling contention that since there was one good count in indictment the judgment could not be reversed for erroneous rulings on demurrers to other counts; demurrers being to each count and verdict being general, no means exist of determining upon which count verdict was rendered or whether rendered upon all. *Avirett v. State*, 76 Md. 527.

If an indictment charges an act to be a felony which is not a felony, the error must be taken advantage of by demurrer. *Hawthorne v. State*, 56 Md. 533.

That the act charged against traverser is not an offense within true meaning of law under which indictment is drawn, or that law itself is unconstitutional, are subjects of demurrer and, since the adoption of this section, can be raised in no other way. *Cowman v. State*, 12 Md. 253. And see *Spielman v. State*, 27 Md. 524; *Cearfoss v. State*, 42 Md. 405.

Since indictment for arson which omits to charge a "burning" is demurrable, the defect cannot be availed of by motion in arrest of judgment; nor can judgment be reversed if no demurrer was filed. *Cochran v. State*, 6 Md. 405.

Indictment being substantially defective and the objection being raised by demurrer, this section held to have no application. *Kearney v. State*, 48 Md. 25.

This section applied, objections to indictment being held to be subjects of demurrer. *State v. Reed*, 12 Md. 272; *Costly v. State*, 48 Md. 177; *State v. Phelps*, 9 Md. 26; *Davis v. State*, 39 Md. 385; *State v. Wade*, 55 Md. 41; *Wedge v. State*, 12 Md. 235; *Kellenbeck v. State*, 10 Md. 437. And see *Norwood v. State*, 45 Md. 71.

Generally.

This section held to have no application where there are several counts in indictment charging traverser with more than one distinct and separate felony; in point of law it is no objection that two or more offenses of same nature and upon which the same or a similar judgment may be given are contained in different counts of same indictment; therefore, it forms no ground for a motion in arrest, nor can the objection be taken by demurrer. *State v. Blakeney*, 96 Md. 713; *State v. McNally*, 55 Md. 562.

This section applied to a motion to quash indictment under sec. 484, because it did not contain allegation that traverser was licensed to sell or was a trader. Object of this section. *State v. Edlavitch*, 77 Md. 145; *Maguire v. State*, 47 Md. 494.

Since burden is on traverser to bring himself within an exception in the statute under which he is prosecuted, an indictment was upheld in view of the portion of this section prohibiting quashing of indictments for want of averment unnecessary to be proved. See notes to sec. 561. *Howes v. State*, 141 Md. 545.

This section referred to in overruling an objection to indictment for assault with intent to commit rape on the ground of a variance between allegation and proof as to time of offense. *Hill v. State*, 143 Md. 361.

The words "current money" in indictment under sec. 318, charging the property stolen to be worth so many dollars "current money," held to be mere surplusage and not ground of reversal under this section. *Gardner v. State*, 25 Md. 151.

This section held not to do away with authority of court to strike out judgment during term at which it is rendered. *State v. Butler*, 72 Md. 100.

An indictment charging that traverser was a free negress when upon the trial it turned out that she was a slave, upheld under this section. *Negro Hammond v. State*, 14 Md. 148.

This section referred to in refusing to review the action of the trial court in declining to accept a plea in abatement. *Cooper v. State*, 64 Md. 44.

An information sustained without reference to this section. *Acton v. State*, 80 Md. 551.

An error in stating the time at which an offense was committed, held immaterial in view of this section. *Allen v. State*, 128 Md. 267.